IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 967

THE AUTOCAR SALES AND SERVICE COMPANY,
Petitioner,

vs.

A. G. LEONARD, F. H. PRINCE AND D. H. REIMERS,
NOT AS INDIVIDUALS, BUT AS TRUSTEES OF THE CENTRAL MANUFACTURING DISTRICT,
Respondents.

PETITION FOR REHEARING OF PETITION FOR WRIT OF CERTIORARI.

To the Honorable, the Acting Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner, The Autocar Sales and Service Company, asks a rehearing of its petition for a writ of certiorari, denied April 22, 1946, and shows:

Respondents' answer to the petition does not deny the merits of the defense asserted in the trial court, but is confined to two points, first, that no Federal question is involved, and, second, if a Federal question is involved, petitioner did not properly raise or preserve it in the State courts.

I.

Respondents have urged that the Second War Powers Act not having attempted to legislate on the *effect* of a taking thereunder, it follows, according to *Erie R. Co.* v. *Tompkins,* 304 U. S. 64, 78, that "the law to be applied * * * is the law of the State." It is noteworthy that respondents did not quote the full sentence. The language immediately preceding the quoted words is, "Except in matters governed by the Federal Constitution or by Acts of Congress,".

The true rule of the interpretation of federal statutes, viewed in the light of *Erie R. Co.* v. *Tompkins,* is stated in Sutherland Statutory Construction (3d ed. by Horack, 1943) Vol. 2, Ch. 46, sec. 4602, pp. 329-330:

> "Since the decision of *Erie R. Co.* v. *Tompkins,* the proposition has been generally accepted that there is no federal common law. However, it is quite certain that *there remains a federal common law of statutory construction.* Previous to the *Erie* case a federal common law of statutory construction was recognized by the federal courts, and so *the principles of statutory construction as developed by the federal courts will be followed in the interpretation of federal statutes.*" (Cf. *O'Brien* v. *Western Union Tel. Co.,* 113 F. (2d) 539 (CCA 1st, 1940); (1940) 54 Harv. L. Rev. 141.) (Italics ours.)

Thus it is clearly demonstrated that there *is* a federal question here involved. A local or state question is not involved.

II.

As to respondents' remaining contention that the federal question was not properly raised or preserved below, the statements contained in petitioner's Summary and Short

Statement of the Matter Involved and in its Jurisdictional Statements should be a sufficient answer. If there be any question on this point, the Court's attention is invited to *Sayward* v. *Denny*, 158 U. S. 180, where, in discussing the essentials of jurisdiction, it was said at p. 184:

> "Or, at all events, it must appear from the record, by clear and necessary intendment, that the Federal question was directly involved so that the state court could not have given judgment without deciding it; • • •"

The state court in this cause could not have given judgment for respondents without deciding that the taking under the federal statute did not operate to give petitioner the immunity from liability claimed by it in its answer in the trial court.

The order of April 22, 1946, should be vacated and a writ of certiorari granted.

Respectfully submitted,

J. GLENN SHEHEE,
Counsel for Petitioner.

RAYMOND F. HAYES,
Of Counsel.